IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 15975 of 2004

Between:

Ch.Pitchaiah, S/o Guruvaiah, R/o H.No.1-1-484/A/1, Nehrunagar, Ward No.3, Suryapet, Nalgonda District

..... PETITIONER

AND

The Depot Manager, APSRTC Depot, Suryapet, Nalgonda District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus call for the records from the respondent pertaining to the impugned proceedings No.P2/2(21)/2004-SRTP dated 2-9-2004 by declaring the action of the Respondent in placing the petitioner under suspension with immediate effect as arbitrary, illegal, un-just, contrary to law laid down by the Honourable Apex Court and this Honourable Court, in violation of circulars of the corporation and also in violation of Articles 14 and 21 of the Constitution of India consequently set-aside the same.

Counsel for the Petitioner:MR.P.SRIDHAR RAO

Counsel for the Respondent: MR.V.T.M.PRASAD, SC FOR APSRTC.

The Court at the admission stage made the following :

ORDER:

Challenging the proceedings No.P2/2(21)/2004-SRTP dated 2-9-2004 of the respondent-Corporation, whereunder the writ petitioner was placed under suspension, the present writ petition is filed.

2. The facts are not in dispute. The petitioner was working as a driver in the respondent-Corporation. On 08-08-2004 at about 18-15 hours, while he was driving an A.P.S.R.T.C bus bearing No.AP 11Z 1428, which was returning from Yeturunagaram to Suryapet, he dashed against a Scooty from its behind near Ajanta Bar, Warangal. As a result, the pillion rider succumbed to injuries on the spot. After enquiry, the respondent-Corporation placed the petitioner under suspension.

3. Sri P. Sridhar Rao, learned counsel appearing for the petitioner raised three contentions in this writ petition that the suspension order is in violation of the circular instructions issued by the Corporation from time to time, and that the Divisional Managers of the nearest depot have not inspected the place of accident so as to take a decision about the suspension of the driver, and that the criminal case is pending in respect of the said accident and it will take some time for disposal. Therefore, the suspension order suffers from serious legal infirmities The learned counsel for the petitioner further submitted that the impugned proceedings may be quashed by considering the factum that since 1979 the petitioner has been working as a driver and in his entire service he has not caused any accident except the present one.

4. On the other hand, the learned counsel appearing for the respondent-Corporation contended that filing of criminal case is not a bar for suspending the petitioner by taking an initiative action departmentally and therefore, the order under challenge does not suffer from serious legal infirmities.

5. With regard to the first contention, the learned counsel for the petitioner placed reliance on the Circular No.P.D.61/91 dated 11-05-

1991 whereunder the Vice-Chairman and the Managing Director issued instructions stating that in all cases of fatal accidents for rash and negligent driving, the past record of such drivers has to be taken into consideration and each case has to be decided not a matter of routine but based on merits. The jurisdiction of the disciplinary authority who passed the impugned proceedings is not under challenge. No doubt, the impugned order does not show whether the disciplinary authority has taken into consideration the past record of the petitioner while passing the impugned proceedings. The circular instructions are issued only for guidance of the disciplinary authorities. Simply on the ground that the disciplinary authority has not taken into consideration the past record of the driver, the suspension order cannot be revoked.

6. The second ground on which the petitioner placed reliance is the Circular No.PD-91/91 dated 21-10-1991 whereunder the nearest Depot Managers have to conduct a joint enquiry with regard to the accidents and take a decision about the suspension of the driver or otherwise. There is no material at this stage to show whether the nearest Depot Managers have visited the place of accident and took a decision about the suspension of the driver. These are only the guidelines issued by the respondent-Corporation for disciplinary authority. Therefore, even if there is any violation, it cannot give any right to the petitioner to revoke his suspension order since the jurisdiction of the disciplinary authority is not under challenge.

7. The learned counsel for the petitioner also relied upon a decision reported in S.K.RAMU V. REGIONAL MANAGER, APSRTC, NALGONDA wherein it was held that:

> ”In that case there was absolutely no iota of difference between the criminal case and the departmental proceedings, and as such, it was held that the departmental proceedings is vitiated in law. In the instant case, we are of the opinion that the case of the appellant stands on a better footing, in the sense, the misconduct which is said to have been committed by the appellant goes out of factual matrix, which was also subject matter of criminal case and not independent. It is not a case where the petitioner was charged with any misconduct

> unconnected with the said accident. In any event, as it has been held by the Criminal Court that the appellant was not guilty of the charge of causing death, and he had not been acquitted on the ground of benefit of doubt, we fail to understand as to how despite the said finding of competent Court of law, the reputation of the respondent-Corporation has been damaged."

For the same proposition, he relied upon another decision reported in APSRTC V. T. VENKATAPATHI wherein it was held that:

> "The charge was only for involvement in a criminal case resulting in instituting of a criminal case against the petitioner. As soon as the criminal case itself was found to be untenable in Court of law, the very basis of the charge was knocked out. The charge should have been quashed as and when the criminal case ended in acquittal."

The learned counsel for the petitioner also relied upon a decision reported in V. CAPT M. PAUL ANTHONY V. BHARAT GOLD MINES LTD. wherein it was held that:

> "There is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common".

8. At this stage, the learned counsel for the petitioner has not filed any material to show whether the evidence to be let in the departmental enquiry and also in the criminal case is one and the same. Hence, there is no bar for the respondent-Corporation to proceed against the writ petitioner departmentally. Therefore, the contention that considerable time will be taken for disposal of the criminal case cannot be accepted. In view of the same, there are absolutely no grounds to interfere with the impugned suspension order.

9. Accordingly, the writ petition is disposed of. The respondent-Corporation is directed to consider the case of the petitioner for revocation of suspension order, in view of the fact that he has not caused any accident in his entire service except the present one and further, the disciplinary authority has not taken into consideration the Circular Nos.PD-61/1990 dated 11-5-1990 and No.PD-91/91 dated 21-10-1991 while passing the impugned suspension order, within two months from the date of receipt of a copy of this order. No costs.

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16-12-2004

To

1. The Depot Manager, APSRTC Depot, Suryapet,
   Nalgonda District.

2. Two C.D. copies.

sj